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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,148	04/14/2004	Joseph Bishop	005618-007	6376

21839 7590 10/18/2005

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,148

Applicant(s)

BISHOP, JOSEPH

Examiner

FREDRICK C. CONLEY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 12, 15-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,662,388 to Friel et al.

Claims 1 and 15, Friel discloses a support structure, comprising:

a main body assembly 9 comprising at least one vertical tubular member and having a top, bottom, and middle section defined by a bore hole 18 extending throughout the middle of the tubular member,

a wheel assembly comprising at least one wheel 2, the wheel assembly attached to the bottom of the main body assembly by a wheel attaching means, wherein the at least one wheel is oriented to rotate about a horizontal axis while supporting the main body assembly, and

an attaching means (20,31,35). With regards to the Applicant's recitation "for supporting a rear portion of a patient transport cart" and "for attaching the main body assembly to a member of the patient transport cart proximate to the rear portion of the patient transport cart" a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim,

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the intended use must result in a manipulative difference as compared to the prior art.

See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 2 and 16, wherein the support structure is removably attachable to the patient transport 13 by the main body attaching means 35.

Claims 3 and 17, wherein the main body attaching means comprises at least one support member 35 having first and second ends, the support member being attached to the main body assembly at the first end and having a mating portion at the second end, wherein said mating portion is adapted to be inserted into a receiving means 37 attached to a member of a patient transport 13 and be removably secured therein by a securing means 39 of the mating portion.

Claim 4, wherein the main body attaching means comprises two diagonally extending support members 35 each having the mating portion and being attached to the main body assembly via the attachment boom 20 at the middle section/bore hole 18.

Claims 5-7, wherein the securing means of the mating portion includes an s-hook comprising a spring loaded retractable closure (col. 5 lines 16-17). Fried fails to disclose the closure comprising a button, removable pin, or clamp. The equivalency of buttons, pins, hooks, and clamps for providing a fastening means is well known and it would have been obvious for one having ordinary skill in the art at the time of the invention to employ a button, removable pin, or clamp in order to provide an alternate means for closure.

Claims 8 and 19, wherein the main body assembly comprises an upper member 11 and a lower member 9, said upper and lower members telescopingly cooperating under control of a height adjustment means (col. 3 lines 1-13).

Claim 12, wherein the wheel assembly comprises two wheels attached to each other via a common member 3, the common member being attached to the bottom of the main body assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,662,388 to Fried et al. in view of U.S. Pat. No. 2,127,309 to Rickard.

Claims 9 and 20, Fried discloses all of the Applicant's claimed limitations except for the height adjustment means having a knob connected to a threaded shaft. Rickard discloses a support structure having telescopic members adjusted through a knob 25 connected to a threaded shaft. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an alternative height adjustment means such as a knob and threaded shaft in order to raise and lower the support of Fried.

Claim 10, wherein the height adjustment means further comprises a crank handle attached to the knob (fig. 3)(Rickard).

Claim 11, wherein the height adjustment means comprises a ratcheting type height adjustment (col. 1 lines 53-55). A ratchet is defined as a mechanism that engages sloping teeth of a wheel such as the mating gears 27 of Rickard therefore the mating gears provide a ratcheting type height adjustment.

Claim 13, Fried discloses all of the Applicant's claimed limitations except for the wheels rotatably connected through a swivel pin. Rickard discloses castors having pin portion extending upwardly into fittings (34,37) and swivelly connected (fig. 2)(col. 2 lines 18-20). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a swivel pin as taught by Rickard in order to maneuver the support of Fried.

Allowable Subject Matter

Claims 14 and 18 are allowed.

Response to Arguments

Applicant's arguments filed 06/08/05 have been fully considered but they are not persuasive.

Contrary to the Applicant's arguments, the sheet element is clearly a member of the patient transport cart of Friel since it's obviously intended to be used with the patient support. Webster's II New Riverside University Dictionary defines a member as a distinct part of a whole therefor the Examiner interprets the sheet as a distinct part of the whole patient adjustment device of Friel. Furthermore, the sheet member is considered a structural unit of the patient adjustment device as stated by the Applicant. The Applicant relies on broad structural language that fails to clearly distinguish the

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present invention over the prior art of record. The sheet is interpreted as a member of the patient transport cart since the sheet member supports the patient and the transport cart supports the sheet member. As stated above, the sheet member is used with the transport cart in order to adjust the position of the patient on the transport cart.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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